IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLIATION NO.279 OF 1996

Vithal Mahadu Ravate
R/o.Balsad Marvadi Manilal
Cyclewala Chawl, Balsad,
Gujrat. .... Petitioner
(Orig.accused)

V/s.

The State of Maharashtra
(Inspector of Police
Kirkee Police Station, Pune) .... Respondent

Mr.S.V. Marvadi for the petitioner.
Mr.S.V. More APP for the State.

CORAM : V.M. KANADE, J.

DATED : 25/8/2006

ORAL JUDGMENT:-

1. Heard the learned counsel for the petitioner and the learned APP for the State.

2. The petitioner is challenging the judgment and order passed by J.M.F.C., Kirkee, Pune, dated 7/2/1992 whereby he was convicted for the offences punishable U/s.279, 304-A, 337 of IPC and Section 78 and 112 of the Motor Vehicles Act and sentenced to undergo simple imprisonment for one month and fine of Rs.750/- for the offence punishable U/s.279 of IPC, further sentenced to undergo simple imprisonment for

nine months for the offence punishable U/s.304-A of IPC, simple imprisonment for 15 days and fine of Rs.500/- for the offence punisahble U/s.337 of IPC and simple imprisonment for seven days and fine of Rs.50/- for the offence punishable U/s.78 and 112 of the Motor Vehicles Act. This order was confirmed in appeal by Additional Sessions Judge, Pune in Criminal Appeal No.30/92.

3. Being aggrieved by the aforesaid order, the petitioner has filed this criminal revision application. Prosecution case is that on 11/8/1986, the petitioner was driving State Transport Bus of Gujrat State and was proceeding on Pune Mumbai Road at 8.30 p.m. It is alleged that near Kirkee railway crossing, bus was driven rashly and negligently and three people on the road were injured and gave dash on the compound wall and three persons inside the compound wall were killed. F.I.R. was lodged. Chargesheet was filed and the petitioner was convicted for the aforesaid offences.

4. Learned counsel appearing on behalf of the petitioner submitted that there was no evidence to

attribute the rash and negligent act to the petitioner and therefore, the conviction which was based on the circumstantial evidence was liable to be quashed and set aside. He submitted that both the courts below erred in recording the finding that the bus was in high speed when no evidence to that effect was given by any of the witnesses. Learned counsel for the petitioner invited my attention on the finding given by both the courts below. He submitted that said finding was liable to be set aside since it was based on conjecture and surmises. He submitted that from the evidence on record it was clear that there were two probabilities in respect of incident which had taken place and the story put forth by the defence was more probable and in such case benefit of doubt ought to have been given to the accused.

5. Learned counsel for the petitioner further relied upon the judgment of the Supreme Court in the case of **Syad Akbar V/s. State of Karnataka reported in (1980)1 Supreme Court Cases 30.**

6. Learned counsel appearing on behalf of the respondents, on the other hand, submitted that

considering the findings and facts on record, both the courts below after appreciating evidence on record came to the conclusion that the petitioner was driving the vehicle rashly and negligently. He submitted that there was no reason to interfere with the said findings recorded by both the courts below and therefore, criminal revision application was liable to be dismissed.

7. I have perused the judgment and order of both the courts below. Prosecution case is that on 11/08/1996 accused was driving State Transport Bus of Gujrat Sate and he gave dash to one Bajaj M-50 moped. The driver of the moped Pramod Lomate and pillion rider Mrs.Anjali Lomate fell down and sustained injuries. Thereafter, accused gave dash to the compound wall of the railway department. As a result, in fact, the S.T. Bus pierced into the compound wall and travelled for about 10 feet and dashed one telephone pole and in this process three persons died on the spot and three persons sustained grievous injuries.

8. Defence of the petitioner is that he tried to

save the motorcyclists and, therefore, turned his vehicle on the extreme left side and, as a result, he dashed compound wall and pedestrians, who being on the other side of the wall, were not visible to the accused and the said incident happened while trying to save the lives of the motorcyclists.

9. From the record, it can be seen that both the courts, after appreciating evidence on record, have given cogent reasons for the purpose of recording findings that the petitioner was driving the vehicle in rash and negligent manner. Submission of learned counsel for the petitioner that both the courts below were not justified in giving findings that the petitioner was driving the vehicle in high speed, can not be accepted. I do not see any reason to interfere with the findings recorded by both the courts below. Both the courts have considered legal position and have considered judgments of the Supreme Court and various High Courts before recording aforesaid findings.

10. Scope of the power which is to be exercised by the High Court in its revisional jurisdiction is very

limited. High Court cannot re-appreciate the evidence and alter the findings recorded by both the lower courts. In my view, there is no legal infirmity in the orders passed by the lower courts. There is no reason, therefore, to interfere with the findings recorded by the lower courts. There is no merit in the submissions made by the learned counsel for the petitioner. Therefore, criminal revision application is dismissed. Rule is discharged. Interim relief stands vacated.

. The application is accordingly disposed of.

. At this stage, learned Counsel appearing for the petitioner seeks eight weeks time to surrender.

. The petitioner is granted eight weeks time to surrender.

V.M. KANADE J.